

**STATE OF TENNESSEE**  
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Opinion No. 07-158

Applicability of Tenn. Code Ann. § 44-17-303(a)(3) to Licensed Veterinarians

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**QUESTIONS**

1. Does Tenn. Code Ann. § 44-17-303(a)(3) apply to a licensed veterinarian?
2. If the answer is in the affirmative, would it make a difference if a licensed veterinarian were working as an independent contractor or a salaried employee?

**OPINIONS**

1. Yes. Tenn. Code Ann. § 44-17-303(a)(3) applies to licensed veterinarians.
2. No. As applied to licensed veterinarians, it makes no difference under Tenn. Code Ann. § 44-17-301, *et seq.* whether the licensed veterinarian is working as an independent contractor or a salaried employee.

**ANALYSIS**

1. Tenn. Code Ann. § 44-17-303(a) is a subsection of the “Non-Livestock Animal Humane Death Act,” Tenn. Code Ann. §§ 44-17-301, *et seq.* Tenn. Code Ann. § 44-17-303 deals with the methods that are allowed to be used for euthanasia of non-livestock animals<sup>1</sup> by public and private agencies, animal shelters and other facilities operated for the collection, care and/or euthanasia of stray, neglected, abandoned or unwanted non-livestock animals. Tenn. Code Ann. § 44-17-303(a) provides as follows:

**44-17-303. Methods allowed.** — (a) Sodium pentobarbital and such

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<sup>1</sup>Tenn. Code Ann. § 44-17-303(h) provides that, for purposes of the Act, “non-livestock animal” shall have the meaning set forth in Tenn. Code Ann. § 39-14-201. The latter section defines “non-livestock animal” as a “pet normally maintained in or near the household or households of its owner or owners, other domesticated animal, previously captured wildlife, an exotic animal, or any other pet, including but not limited to, pet rabbits, a pet chick, duck, or pot bellied pig that is not classified as ‘livestock’” pursuant to Tenn. Code Ann. § 39-14-201, *et seq.* However, under Tenn. Code Ann. § 44-17-303(k), the provisions of the Act do not apply to exotic animals being held under the authority of title 70, chapter 4, part 4, and Tenn. Comp. R. & Regs. 1660-1-18-.05.

other agents as may be specifically approved by the rules of the board of veterinary medicine shall be the only methods used for euthanasia of non-livestock animals by public and private agencies, animal shelters and other facilities operated for the collection, care and/or euthanasia of stray, neglected, abandoned or unwanted non-livestock animals. A lethal solution shall be used in the following order of preference:

- (1) Intravenous injection by hypodermic needle;
- (2) Intraperitoneal injection by hypodermic needle;
- (3) Intracardial injection by hypodermic needle, but only if performed on heavily sedated, anesthetized or comatose animals;**  
**or**
- (4) Solution or powder added to food.

(Emphasis added).

Under the Act, euthanasia shall be performed only by a licensed veterinarian, Tennessee veterinarian medical technician or an employee or agent of a public or private agency, animal shelter or other facility operated for the collection, care and/or euthanasia of stray, neglected, abandoned or unwanted non-livestock animals, provided that the Tennessee veterinarian medical technician, employee or agent has successfully completed a euthanasia-technician certification course.<sup>2</sup> Tenn. Code Ann. § 44-17-303(d). An employee, agent or Tennessee veterinarian medical technician performing euthanasia prior to July 1, 2001, who previously passed an approved euthanasia-technician certification course will be accepted as qualified under the Act to perform euthanasia on non-livestock animals. However, any other employee, agent or Tennessee veterinarian medical technician seeking to perform euthanasia on non-livestock animals on or after July 1, 2001, must obtain certification prior to performing any such euthanasia. Tenn. Code Ann. § 44-17-303(e). In addition, a non-livestock animal may not be left unattended between the time euthanasia procedures are first begun and the time that death occurs, “nor may its body be disposed of until a qualified person confirms death.” Tenn. Code Ann. § 44-17-303(f).

The Act provides further that, notwithstanding Tenn. Code Ann. § 44-17-303 or any other law to the contrary, “whenever an emergency situation exists in the field that requires the immediate euthanasia of an injured, dangerous or severely diseased non-livestock animal, a law enforcement officer, a veterinarian, or agent of a local animal control unit or the designee of such an agent may humanely destroy the non-livestock animal.” Tenn. Code Ann. § 44-17-303(g).

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<sup>2</sup>The curriculum for such euthanasia-technician certification course must be approved by the Tennessee Board of Veterinary Medical Examiners and must include, at a minimum, the following: knowledge of animal anatomy, behavior and physiology; animal restraint and handling as it pertains to euthanasia; the pharmacology, proper dosages, and administration techniques of euthanasia solution; verification of death techniques; laws regulating the storage, security and accountability of euthanasia solutions; euthanasia technician stress management; and the proper disposal of euthanized non-livestock animals. Tenn. Code Ann. § 44-17-303(d).

The “General Rules Governing Veterinarians” promulgated by the Tennessee Board of Veterinary Medical Examiners invokes the Act by providing that violation of Tenn. Code Ann. §§ 44-17-301, *et seq.* by a licensed veterinarian constitutes unprofessional conduct. Specifically, Tenn. Comp. R. & Regs. 1730-1-.13(14) provides that unprofessional conduct shall include but not be limited to “[v]iolation of the provisions of the Non-Livestock Animal Humane Death Act codified at T.C.A. §§ 44-17-301, *et seq.* while performing euthanasia in a public or private agency, animal shelter or other facility operated for the collection, care and/or euthanasia of stray, neglected, abandoned or unwanted non-livestock animals.” In turn, unprofessional conduct constitutes one of the grounds for which the Board may impose discipline against a licensed veterinarian’s professional license. The Board has the power to deny, suspend or revoke any license or to otherwise discipline an applicant or licensee who is found guilty by the Board of one or more of twenty-eight enumerated violations, Tenn. Code Ann. § 63-12-124(a), which include “unprofessional or unethical conduct, or engaging in practices in connection with the practice of veterinary medicine that are in violation of the standards of professional conduct, as defined in this section or prescribed by the rules of the board.” Tenn. Code Ann. § 63-12-124(a)(12).

The apparent underlying rationale for the requirements that are set forth in Tenn. Code Ann. § 44-17-303 and Tenn. Comp. R. & Regs. 1730-1-.13(14) is supported by the American Veterinary Medical Association’s Guidelines on Euthanasia, June, 2007, in which the AVMA takes the following position on euthanasia by means of intracardiac injection:

Intracardiac injection is acceptable only when performed on heavily sedated, anesthetized, or comatose animals. It is not considered acceptable in awake animals, owing to the difficulty and unpredictability of performing the injection accurately.

AVMA Guidelines on Euthanasia, p. 11. In addition, such guidelines stress that “[i]t is imperative that death be verified after euthanasia and before disposal of the animal. An animal in deep narcosis following administration of an injectable or inhalant agent may appear dead, but might eventually recover. Death must be confirmed by examining the animal for cessation of vital signs . . .” *Id.* at p. 4. Further, the Policies and Guidelines of the Humane Society of the United States, HSUS Statement on Euthanasia Methods for Dogs and Cats, section on Sodium Pentobarbital, provides in pertinent part as follows:

Intracardiac (IC) injections [of sodium pentobarbital] (into one of the four chambers of the heart) are acceptable **only** for animals who have been verified as unconscious. An injection into a conscious animal’s chest is stressful and extremely painful and therefore considered to be cruel.

Further, it goes on to describe two methods for ensuring that an animal is unconscious before administering an intracardiac injection and stresses that “**both** of these methods should be used in every case.” (emphases in original). Humane Society of the United States Policies and Guidelines, HSUS Statement on Euthanasia Methods for Dogs and Cats (last updated August 23, 2005)

[http://www.animalsheltering.org/resource\\_library/policies\\_and\\_guidelines/statement\\_on\\_euthanasia.html](http://www.animalsheltering.org/resource_library/policies_and_guidelines/statement_on_euthanasia.html).<sup>3</sup> Moreover, the Attorney General of the State of California has opined that it is a violation of that state's animal cruelty laws for an animal control officer or humane society officer to use intracardiac administration of euthanasia on a conscious animal in an animal control shelter or humane society facility if the animal may first be rendered unconscious in a humane manner or if, in light of all the circumstances, the procedure is unjustifiable. Cal. Op. Atty. Gen. 01-103 (January 2, 2002).

In construing Tenn. Code Ann. § 44-17-303(a)(3), which permits euthanasia by intracardial [intracardiac] injection by hypodermic needle, but only if performed on heavily sedated, anesthetized or comatose animals, we must consider that subsection within the context of the entire Act. This is because the rule of statutory construction that statutes must be construed *in pari materia* with each other applies with equal force to separate provisions within a single statute:

The different parts of a statute reflect light upon each other, and statutory provisions are regarded as *in pari materia* where they are parts of the same act. Hence, a statute should be construed in its entirety, and as a whole. All parts of the act should be considered, and construed together. It is not permissible to rest a construction upon any one part alone, or upon isolated words, phrases, clauses, or sentences, or to give undue effect thereto. The legislative intention, as collected from an examination of the whole as well as separate parts of a statute, is not to be defeated by the use of particular terms.

*Faust v. Metropolitan Government of Nashville*, 206 S.W.3d 475, 490 (Tenn. 2006)(citations omitted).

In our view, in construing the Act as a whole, Tenn. Code Ann. § 44-17-303(a)(3) clearly applies to licensed veterinarians. While the Act provides that it is applicable “only to public and private agencies, animal shelters and other facilities operated for the collection, care and/or euthanasia of stray, neglected, abandoned or unwanted non-livestock animals,” Tenn. Code Ann. § 44-17-302, this language simply refers to the applicable agencies or facilities in which such euthanasia occurs, and not to the individuals who actually perform such euthanasia. Rather, the Act as a whole includes licensed veterinarians as being among those persons authorized to perform euthanasia, Tenn. Code Ann. § 44-17-303(d); therefore, licensed veterinarians are subject to the provisions of the Act.<sup>4</sup> Further, as a person authorized by the Act to perform euthanasia, a licensed

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<sup>3</sup>Both the AVMA Guidelines and the HSUS Statement also reject as unacceptable a number of other nonvascular euthanasia injection routes, including intrathoracic (into the chest cavity) injections.

<sup>4</sup>The Tennessee Supreme Court has construed the Act in the completely different context of a death row inmate's assertion that the State's lethal injection protocol violates the Act. While noting that the plain language of the Act is applicable only to certain public and private agencies set out in Tenn. Code Ann. § 44-17-302, which group does not include the Department of Correction, the Court also pointed out the absurd conclusion that necessarily would result from the petitioner's interpretation of the Act, namely, “that lethal injections of death row inmates may be carried out

veterinarian necessarily falls within the category of a “qualified person” required to confirm the death of a euthanized non-livestock animal before its body may be disposed of. Tenn. Code Ann. § 44-17-303(f). Even more compelling is the fact that violation of the Act constitutes a crime: “Any person who violates this part is guilty of a Class A misdemeanor.” Tenn. Code Ann. § 44-17-303(j).<sup>5</sup> Thus, criminal penalties could be imposed against a licensed veterinarian who is convicted of violating Tenn. Code Ann. § 44-17-303(a)(3) by performing euthanasia by intracardial injection by hypodermic needle on non-livestock animals that are not heavily sedated, anesthetized or comatose.

For the above reasons, it is the opinion of this office that Tenn. Code Ann. § 44-17-303(a)(3) applies to licensed veterinarians.

2. The prohibitions of Tenn. Code Ann. § 44-17-301, *et seq.* apply to all euthanasia procedures carried out in the agencies and facilities to which the Act applies by any of the persons authorized to perform euthanasia under the Act, including licensed veterinarians. The language of the Act does not draw any distinction for purposes of its application to licensed veterinarians between veterinarians who are salaried employees of the agency or facility where they perform animal euthanasia and those who are independent contractors. Accordingly, as applied to licensed veterinarians, it makes no difference under the Act whether the veterinarian is working as an independent contractor or a salaried employee.

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only by veterinarians or other technicians described in this Act.” *Abdur’Rahman v. Bredesen*, 181 S.W.3d 292, 312, 313 (Tenn. 2005).

<sup>5</sup>In addition, Tenn. Code Ann. § 44-17-303(i) provides that the Attorney General and Reporter may bring an action to enjoin any violation of the Act.